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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/540,853	03/31/00	LOWE J	2000-0462.OR

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EXAMINER	
MUROMOTO JR,R	
ART UNIT	**PAPER NUMBER**
3765	5

DATE MAILED: 02/02/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 09/540,853	Applicant(s) LOWE, JOHN CHARLES	
	Examiner Robert H Muromoto, Jr.	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *31 March 2000* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a)☐ All b)☐ Some * c)☒ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

15) ☒ Notice of References Cited (PTO-892)
16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
18) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
19) ☐ Notice of Informal Patent Application (PTO-152)
20) ☐ Other: .

DETAILED ACTION

Priority

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in UK on Sept. 18, 1999. It is noted, however, that applicant has not filed a certified copy of the British patent application as required by 35 U.S.C. 119(b).

Specification

The abstract of the disclosure is objected to because of the use of "said" in lines 2 and 4 of the abstract. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> **The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.**

Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to

whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 1 and 8 recite the broad recitation "a woven fabric", and the claim also recites "in particular labels," which is the narrower statement of the range/limitation.

In claim 9, line 3 the recitation "preferably" is unclear.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, and 6-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Evers.

Evers discloses a textile fabric with woven-in bar code and the process for the manufacture of such a fabric. Referring to Fig.1, the fabric (1) is made as a band (2) of material, having a plurality of labels (3) each of which comprises a bar code (4) woven therein. The code bars must obviously consist of material which contrasts with the base, at least as seen by the scanning beam. The labels may be woven singly, but it is especially advantageous to produce a continuous series of identical labels, for instance on a computer controlled band weaving machine. As shown in the drawings, labels of

this type have a code section (4) that is identical for all of them and a code section (5) specific to each individual label.

The limitations recited in the instant case with respect to the appearance of an array of spaced apart dots, which are defined by a predetermined number of wefts which float over a predetermined number of warps is inherent to the product of Evers. Altering weft yarns positions is how designs of all kinds are produced on fabrics.

Figure 1, shows how the bar code of Evers is arranged in rows and columns which are spaced apart in the weft direction.

The limitations of claims 9-11 do not recite process steps which would further limit the process as recited in claim 8, therefore these claims are also anticipated by Evers.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evers.

Although Evers teaches all of the limitations of the claims listed above, Evers does not teach the specific shape and size of the dots which form the bar code.

However, absent any criticality to the structure of the fabric or unexpected results from the specific shape and size of the dots, it is considered that these limitations are

arbitrary and therefore obvious, as one of ordinary skill in the art at the time of invention could have through routine experimentation determined the optimum dot size and shape for use in woven bar code fabrics.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ramsbottom teaches a jacquard loom for making labels and badges and Asada et al. teaches printed cloth labels.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert H Muromoto, Jr. whose telephone number is 703-306-5503. The examiner can normally be reached on 8-530, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 703-305-1025. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-3540 for regular communications and 703-308-0758 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.

bhm
January 31, 2001

JOHN G. CALVERT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700